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7 *Successor Receiver*

8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**

11 SECURITIES AND EXCHANGE  
12 COMMISSION,

13 Plaintiff,

14 v.

15 JOHN V. BIVONA; SADDLE  
16 RIVER ADVISORS, LLC; SRA  
17 MANAGEMENT ASSOCIATES,  
18 LLC; FRANK GREGORY  
19 MAZZOLA,

20 Defendants, and

21 SRA I LLC; SRA II LLC; SRA III  
22 LLC; FELIX INVESTMENTS, LLC;  
23 MICHELE J. MAZZOLA; ANNE  
24 BIVONA; CLEAR SAILING  
25 GROUP IV LLC; CLEAR SAILING  
26 GROUP V LLC,

27 Relief Defendants.  
28

Case No. 3:16-cv-01386-EMC

**EIGHTH INTERIM ADMINISTRATIVE  
MOTION FOR AN ORDER PURSUANT TO  
LOCAL RULE 7-11 FOR THE APPROVAL  
OF FEES AND EXPENSES FOR THE  
SUCCESSION RECEIVER, DIAMOND  
MCCARTHY LLP, AND MILLER KAPLAN  
ARASE LLP FROM OCTOBER 1, 2020  
THROUGH DECEMBER 31, 2020**

Date: No Hearing Set  
Time: No Hearing Set  
Judge: Edward M. Chen

**I. Relief Requested**

Pursuant to Local Rule 7-11, through this motion, the Receiver seeks approval of compensation and reimbursement of expenses for herself and her professionals for the period of October 1, 2020 through December 31, 2020 (“Motion Period”) in the following amounts:

Receiver: Fees \$32,571.50.<sup>1</sup>

Diamond McCarthy LLP (“Diamond McCarthy”): Fees \$43,559.20; Costs \$9.60.

Miller Kaplan Arase LLP (“Miller Kaplan”): Fees \$3,555.60; Costs \$99.03, inadvertently omitted from the Third Quarter 2020, as set forth below.

This Motion is supported by the Declarations of the Receiver, Christopher Sullivan of Diamond McCarthy, and Julia Damasco of Miller Kaplan.

The Receiver has conferred with counsel for the Securities and Exchange Commission (“SEC”), and counsel for Progresso Ventures, and the Receiver is advised that they do not oppose the Motion. A stipulation with all parties was deemed impractical given, among other things, the entry of judgment against defendants and pending bankruptcy of John Bivona. (L.R. 7-11(a)).

**II. Previous Fee Motions**

Fees and expenses have previously been granted as follows:

Order on First Interim Motion (Dkt. 485): Receiver fees of \$46,287.00 and costs of \$3,033.33 and Diamond McCarthy fees of \$16,802.80 and costs of \$524.67 (fees subject to 20% hold back).

Order on Second Interim Motion (Dkt. No. 515): Receiver fees of \$85,735.50 and costs of \$185.93 and Diamond McCarthy fees of \$30,625.00 and costs of \$1,924.16 (fees subject to 20% hold back).

Order on Third Interim Motion (Dkt. No. 537): Receiver fees in the amount of \$40,349.40 and costs of \$542.73 and Diamond McCarthy fees of \$4,450.90 and costs of \$131.35 (fees subject to 20% hold back).

Order on Fourth Interim Motion (Dkt. No. 567): Receiver fees in the amount of \$50,187.30 and costs of \$27.00 and Diamond McCarthy fees of \$12,550.00 (fees subject to 30% holdback);

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<sup>1</sup> The Receiver has agreed to a holdback of 20% of this amount and therefore request authority to pay \$26,057.20.

1 Miller Kaplan fees of \$42,465.60 and Schinner fees of \$5,044.96 (fees subject to 20% holdback).

2 Order on the Fifth Interim Motion (Dkt No. 615): Receiver fees in the amount of \$75,058.00  
3 and costs of \$145.00 and Diamond McCarthy fees of \$32,454.00 (fees subject to 20% holdback);  
4 Schinner fees of \$2,450.00 and costs of \$622.06.

5 Order on Sixth Interim Motion (Dkt. No. 621): Receiver fees in the amount of \$43,904.00 and  
6 costs of \$388.39, Diamond McCarthy fees of \$29,398.90 and costs of \$919.78, and Miller Kaplan fees  
7 of \$16,399.20 (subject to 20% holdback); Schinner fees of \$900.

8 Order on Seventh Interim Motion (Dkt. No. 633): Receiver fees in the amount of \$83,732.00  
9 and costs of \$388.39 (fees subject to 20% holdback), Diamond McCarthy fees of \$82,500.50 and costs  
10 of \$508.60, and Miller Kaplan fees of \$25,996.40; Schinner fees of \$11,371.50. The Order further  
11 authorized the payment of the following holdbacks: \$26,511.32 for Diamond McCarthy, \$11,772.96  
12 for Miller Kaplan, and \$3,761.24 for Schinner.

13 As of December 31, 2020, there are outstanding fee holdbacks from the prior fee applications  
14 in the following amounts:

15 Sherwood Partners, Former Receiver	\$144,627.50
16 Kathy Bazoian Phelps, Receiver	\$90,068.97
<b>Total</b>	<b>\$234,696.47</b>

17  
18 As of December 31, 2020, the Receiver was currently holding cash in the following amounts in  
19 the following accounts:

20 Checking	\$6,174.82
21 Anna Bivona Funds	\$502,433.34
22 Plan Fund checking	\$250,000.00
23 Tax Holding checking	\$250,000.00
Plan Fund ICS	\$4,394,238.75
Tax Holding ICS	\$1,142,009.38

### 24 **III. Case Status**

25 The Court approved the Receiver's Plan of Distribution ("Plan") on May 25, 2020 (Dkt.  
26 No. 613). Upon the Plan's approval, the Receiver began taking the steps necessary to implement  
27 the Plan, including preparing distribution schedules and communicating with investors regarding  
28

1 their account information. The Receiver worked with Miller Kaplan to address the proper manner  
 2 of calculating the sale and distributions of the publicly traded securities. The Receiver filed a  
 3 motion seeking Court authority to sell securities to fund the Plan Fund and the Tax Holding  
 4 Account and to make interim distributions to investors holding allowed claims. The motion was  
 5 approved on July 20, 2020 (Dkt. No. 619), and the Receiver has largely completed the first interim  
 6 distributions of publicly traded securities, with just one more investor to receive shares when the  
 7 investor provides necessary account information. The Receiver also sought authority to sell the  
 8 necessary Palantir shares upon notification of Palantir's direct listing, and the sales process was  
 9 completed in early October 2020, resulting in net proceeds to the Estate of \$9,854,109.90. In  
 10 November 2020, the Receiver transferred the remaining \$94,419.56 in the money market account  
 11 into the checking account. The Receiver sought authority to make an interim distribution to Class  
 12 3 Claimants in the amount of \$7,721,752.95, which was completed in December 2020. The  
 13 Receiver with the assistance of Diamond McCarthy continues to prosecute the lawsuit against Ben  
 14 Sabrin for the return of 6,250 shares of MongoDB, or the value thereof, that he owes to the estate.

15 As of December 31, 2020, the receivership estate has \$6,174.82 in cash on hand in a  
 16 checking account, \$502,433.34 in the segregated Anna Bivona funds, \$4,644,238.75 in the Plan  
 17 Fund, and \$1,392,009.38 in the Tax Holding Account. There are known accrued expenses and  
 18 unpaid expenses of \$79,794.83 through December 31, 2020 for fourth quarter fees and expenses,  
 19 and holdbacks of \$234,696.47. Attached to the Declaration of the Receiver as Exhibit "1" is a  
 20 financial summary showing the cash status of the estate as of December 31, 2020. Funds in the  
 21 amount of \$218,036.82 representing third quarter fees and expenses were disbursed during this  
 22 period. The Standardized Fund Accounting Report required by the SEC for the fourth quarter 2020  
 23 is attached to the Receiver's Declaration as Exhibit "2."

#### 24 **IV. The Receiver's Fee Request**

25 As detailed in the Declaration of the Receiver, pursuant to the Receiver's proposal for her  
 26 appointment, and in recognition of the efficiencies and benefits to the estate, the Receiver has  
 27 established separate billing categories for services provided. For services provided with respect to  
 28 legal issues, the Receiver has discounted her hourly rate of \$675.00 to \$425.00, thereby generating

significant savings to the estate. The Receiver has agreed to charge \$130.00 per hour for herself and her assistants for administrative services. The billing statements itemizing the services provided and expenses incurred are contained in Exhibit “3” attached to the Declaration of the Receiver. The Receiver performed services for each category as follows:

Matter	Hours	Fees
Case Administration (2598-00012)	20.80	\$8,840.00
Administrative Services (2598-00012)	8.30	\$1,079.00
Asset Analysis and Recovery (2598-00014)	9.10	\$3,867.50
Plan Implementation (2598-00016)	44.20	\$18,785.00
<b>TOTAL</b>	<b>82.40</b>	<b>\$32,571.50</b>

#### **V. Diamond McCarthy’s Fee Request**

As detailed in the Declaration of Christopher Sullivan, Diamond McCarthy has established billing categories for tasks performed and has significantly discounted its billing rates with senior attorneys capping their hourly rate at \$425.00. The billing statements itemizing the services provided and expenses incurred are attached as Exhibit “4” to the Sullivan Declaration. Diamond McCarthy incurred costs of \$9.60 and performed services for each category as follows:

Matter	Hours	Fees
Plan Implementation (2622-00013)	78.30	\$33,277.50
Asset Analysis and Recovery (2622-00015)	24.50	\$10,281.70
<b>TOTAL</b>	<b>102.80</b>	<b>\$43,559.20</b>

#### **VI. Miller Kaplan’s Fee Request**

As detailed in the Declaration of Julia Damasco and the billing statements attached as Exhibit “5” to her Declaration, Miller Kaplan has incurred \$3,555.60 in fees in costs in connection with providing tax services to the Receiver. The services performed by Miller Kaplan were necessary in implementing the Plan and in preparing the 2016 through 2019 taxes for the Qualified Settlement Fund.

Moreover, as set forth in the Receiver’s Seventh Interim Administrative Motion and declaration of Julia Damasco attached thereto, Miller Kaplan incurred \$99.03 in costs during the

1 Third Quarter 2020. (Doc. No. 632-3.) Those costs were inadvertently left off the proposed order  
2 that the Receiver submitted to the Court. (Doc. No. 632-5.) The Receiver therefore requests  
3 authority in this Motion to reimburse those costs as well.  
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5 **WHEREFORE**, the Receiver seeks entry of an order granting this Motion in all respects.  
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7 Dated: January 21, 2021

By: /s/Kathy Bazoian Phelps

8 Kathy Bazoian Phelps, Receiver  
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